

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

JUNIOR RUSSELL,	)	
AIS #240688,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 2:09-CV-859-TMH
	)	[WO]
	)	
JAMES WILSON, et al.,	)	
	)	
Defendants.	)	

**RECOMMENDATION OF THE MAGISTRATE JUDGE**

This cause of action is pending before the court on a 42 U.S.C. § 1983 complaint filed by Junior Russell ["Russell"], a state inmate, on August 9, 2009. In his complaint, Russell challenges actions taken against him during his confinement at the Elmore Correctional Facility.

Pursuant to the orders of this court, the defendants filed a written report supported by relevant evidentiary materials in which they addressed the claims for relief presented by Russell. The report and evidentiary materials respond to the allegations presented in the instant cause of action. Specifically, the documents indicate that the defendants did not act in violation of the plaintiff's constitutional rights. The court thereafter issued an order directing Russell to file a response to the written report. *Order of January 25, 2010 - Court Doc. No. 21*. This order advised Russell that his failure to respond to the defendants' written report would be treated by the court "**as an abandonment of the claims set forth**

**in the complaint and as a failure to prosecute this action.”** *Id.* at 1 (emphasis in original). Additionally, the order “**specifically cautioned [the plaintiff] that [his failure] to file a response in compliance with the directives of this order**” would result in the dismissal of this civil action. *Id.* The time allotted Russell for filing a response in compliance with the aforementioned order expired in February of 2010. *Id.* As of the present date, Russell has failed to file a response in opposition to the defendants’ written report. In light of the foregoing, the court concludes that this case should be dismissed.

The court has reviewed the file in this case to determine whether a less drastic measure than dismissal is appropriate. After such review, it is clear that dismissal of this case without prejudice is the proper course of action. Russell is an indigent inmate. Thus, the imposition of monetary or other punitive sanctions against him would be ineffectual. Additionally, Russell has failed to comply with the directives of the orders entered in this case. It is therefore apparent that any additional effort by this court to secure his compliance would be unavailing. Consequently, the court concludes that the plaintiff’s abandonment of his claims, his failure to comply with the orders of this court and his failure to properly continue prosecution of this cause of action warrant dismissal of this case.

### **CONCLUSION**

For the foregoing reasons, it is the RECOMMENDATION of the Magistrate Judge that this case be dismissed without prejudice. It is further

ORDERED that on or before September 30, 2011, the parties may file objections to the Recommendation. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation to which the party is objecting. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and advisements in the Magistrate Judge's Recommendation shall bar the party from a de novo determination by the District Court of issues covered in the Recommendation and shall bar the party from attacking on appeal factual findings in the Recommendation accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5<sup>th</sup> Cir. 1982); *see Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11<sup>th</sup> Cir. 1982); *see also Bonner v. City of Prichard*, 661 F.2d 1206 (11<sup>th</sup> Cir. 1981, *en banc*), adopting as binding precedent all decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

DONE, this 16<sup>th</sup> day of September, 2011.

/s/ Susan Russ Walker  
SUSAN RUSS WALKER  
CHIEF UNITED STATES MAGISTRATE JUDGE